

ROBB, Judge

Case Summary and Issue

Michael Humphrey is employed as a police officer for the city of Cannelton, Indiana. The Cannelton Board of Public Works and Safety (the “Board”) suspended Humphrey for fifteen days without pay for neglect of duty. Humphrey sought judicial review of the disciplinary decision and, following an evidentiary hearing, the trial court entered findings of fact and conclusions thereon reversing the Board’s decision. The Board filed a motion to correct error. A special judge entered an order granting the Board’s motion, vacating the previous order, and reinstating the Board’s disciplinary decision. Humphrey now appeals, contending that the trial court erred in granting the Board’s motion to correct error. Concluding that the grant of the motion to correct error was not an abuse of discretion, we affirm.

Facts and Procedural History

Humphrey has been a full time police officer in Cannelton since December of 2000. In early 2006, Humphrey was charged with four counts of misconduct: 1) neglect of duty for leaving his squad car in disarray when the car was taken to Tell City High School for exterior paint work; 2) neglect of duty for leaving his taser gun in his squad car when it was taken to Tell City High School; 3) conduct unbecoming an officer for conducting a traffic stop of a man with whose wife Humphrey was romantically involved; and 4) neglect of duty for not informing the chief of police about a scheduling conflict which left no one on duty for several hours on Sundays. The Board considered these charges in an executive session on April 4, 2006, and, at a public meeting on April 11, 2006, adopted Resolution 6-02 concerning disciplinary action. The Resolution found that Humphrey had committed each of

the offenses and should be suspended for fifteen days without pay.

At Humphrey's request, and pursuant to Indiana Code section 36-8-3-4(c), a public hearing was held on May 11, 2006. Following that hearing, the Board met in executive session and then, at a regular meeting on June 12, 2006, issued findings of fact again finding that Humphrey should be suspended without pay for fifteen days.

Pursuant to Indiana Code section 36-8-3-4(e), Humphrey filed a petition for judicial review which was heard by Judge James McEntarfer of the Perry Circuit Court on September 1, 2006. On December 28, 2006, Judge McEntarfer entered the following relevant findings of fact and conclusions of law reversing the Board's findings and decision to take disciplinary action against Officer Humphrey:

16. There are conflicts in the evidence presented during the formal hearing on May 11, 2006.

* * *

21. There was a conflict between the verbal orders issued by Chief Cox during meetings and to Officer Humphrey regarding whether he was required to leave or remove the taser from his vehicle when he went off duty.

22. There was a conflict between the written work shift schedule and the verbal order from Chief Cox to Officer Humphrey regarding Humphrey's work schedule on Sundays.

23. The conflict between the orders regarding the taser was whether Humphrey should leave the taser in his car pursuant to the verbal order issued by Chief Cox during the meetings with full-time and reserve officers or whether he should remove the taser gun as implied by Chief Cox concerning Humphrey turning his vehicle in for work to be conducted at Tell City High School.

24. The conflict between the written work shift schedule and Chief Cox's oral order to Humphrey concerned whether Humphrey should remain on duty until 10:00 p.m. on Sundays as set forth in the written work shift schedule or should go off work at 8:00 p.m. on Sundays pursuant to the verbal order.

* * *

CONCLUSIONS OF LAW

34. The [Board] may discipline Humphrey by reprimand or suspension upon a finding and decision that Humphrey has been guilty of one or more of the

following:

- a. Neglect of duty, a violation of rules, neglect or disobedience of orders, or conduct unbecoming an officer.

* * *

38. This Court is aware that it may not substitute its judgment for that of the [Board] as to the weight and effect of the evidence.

39. Further, this Court is aware that it may not substitute its judgment as to the disciplinary action “punishment” when there are no compelling circumstances present.

40. This Court must give deference to the [Board] in its decision except where this Court determines the [Board’s] decision is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

41. In a police disciplinary action, when the administrative body adheres to or follows proper legal standards, and the findings of the administrative body are based upon substantial evidence in a record, then this Court must give deference to the administrative body, and in effect this Court’s hands are tied even if this Court were to come to a different conclusion based on that same evidence.

* * *

43. In the instant matter, the City asserts three separate factual basis [sic] for its decision, to-wit: car, scheduling[,] Sims matters.

44. The car matter consists of two alleged violations regarding the taser gun and trash/documents in the police vehicle.

45. The evidence is so conflicting regarding Officer Humphrey’s actions on the taser gun that to conclude Humphrey violated an order would be contrary to the weight and effect of the evidence and as such arbitrary and capricious.

46. There is substantial evidence in the record to support the findings that Humphrey maintained and left the police vehicle in question in a state of disarray regarding the presence of trash, chewing tobacco on the floor, cups and partially completed case reports.

47. The evidence regarding the scheduling matter is so conflicting and incomplete that to conclude Humphrey is in violation of the City’s Standard Operating Procedure would be against the weight and effect of the evidence and as such is arbitrary and capricious.

48. There is substantial evidence in the record to support the finding that Humphrey violated written rules and procedures and Chief Cox’s verbal orders to Humphrey as to his interaction with Matt Sims.

* * *

52. The disciplinary action is based on disobedience of orders and misconduct by Humphrey in two (2) separate matters, to-wit: trash in car and making a traffic stop for a welfare check of approximately one (1) hour in connection with Matt Sims.

53. The record in this case is void of any evidence or circumstances which

show a rational relationship between the findings of the trash in the car and Sims matters and the need for a fifteen (15) day suspension.

Appendix of the Appellant at 17-21.

The Board filed a Motion to Correct Errors alleging:

The trial court's independent findings and judgment usurped the authority of the [Board]; were the end result of the trial court substituting its judgment for that of the [Board]; resulted from the trial court impermissibly weighing the credibility of the witnesses; and were made without paying proper deference to the jurisdiction and statutory authority that the legislature gave to the [Board].

Id. at 25. Senior Judge Hugo Songer was appointed to consider the motion to correct error.¹

On February 22, 2007, Judge Songer entered an order granting the motion to correct error and vacating the court's December 28, 2006, order. William Shaneyfelt, attorney for the Board, wrote to Judge Songer and stated that in accordance with Indiana Code section 36-8-3-4(i), specific findings of fact would be necessary to support the decision. Shaneyfelt offered to prepare proposed findings and conclusions for the court's consideration. By letter dated March 1, 2007, Judge Songer requested that Shaneyfelt prepare proposed findings. On March 14, 2007, Judge Songer signed the Board's proposed findings, denying Humphrey the relief requested in his petition for judicial review. Humphrey then initiated this appeal.

Discussion and Decision

I. Standard of Review

We review the trial court's decision on a motion to correct error for abuse of

¹ It appears that Judge McEntarfer's term ended on December 31, 2007, and he was no longer the judge of Perry Circuit Court when the Board filed its Motion to Correct Error. The regular judge of Perry

discretion. See Principal Life Ins. Co. v. Needler, 816 N.E.2d 499, 502 (Ind. Ct. App. 2004).

An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom. Id. An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations. Id.

We also consider the standard of review for the underlying ruling, see Shane v. Home Depot USA, Inc., 869 N.E.2d 1232, 1234 (Ind. Ct. App. 2007), which in this case was the trial court's reversal of the Board's disciplinary decision. Under Indiana Code section 36-8-3-4, a board must follow specific substantive and procedural measures before disciplining officers. Indiana Code section 36-8-3-4(c) states in pertinent part: "Before a member of a police or fire department may be suspended in excess of five (5) days without pay, demoted, or dismissed, the safety board shall offer the member an opportunity for a hearing." Such discipline may follow a conviction of a crime, or a "finding and decision of the safety board that the [officer] has been . . . guilty" of certain enumerated conduct, including a violation of rules, disobedience of orders, and conduct unbecoming an officer. Ind. Code § 36-8-3-4(b).

The decision of the safety board may be appealed by filing a verified complaint. Ind. Code § 36-8-3-4(f). However, the "decision of the safety board is considered prima facie correct, and the burden of proof is on the party appealing." Ind. Code § 36-8-3-4(h). Judicial review of the safety board's decision is limited to determining whether the safety board possessed jurisdiction of the subject matter and whether its decision was made pursuant to proper procedures, was based upon substantial evidence, was not arbitrary or

Circuit Court at that time recused herself. See App. of Appellant at 2.

capricious, and was not in violation of any constitutional, statutory or legal principle. Rynerson v. City of Franklin, 669 N.E.2d 964, 971 (Ind. 1996). The trial court is required to “make specific findings and state the conclusions of law upon which its decision is made.” Ind. Code § 36-8-3-4(i). On appeal from the final judgment of the trial court, we review a decision made by the safety board as we do the decision of an administrative agency. We may not determine questions of credibility or weigh conflicting evidence and a decision is arbitrary and capricious only where there is no reasonable basis for the decision. See Chesser v. City of Hammond, Indiana, 725 N.E.2d 926, 930 (Ind. Ct. App. 2000).

II. Grant of Motion to Correct Error

Humphrey “singularly takes issue with the wholesale adoption by the trial court of the proposed findings of fact and conclusions of law drafted by counsel for [the Board] at the trial level.” Brief of Appellant at 5. We note first that the special judge had the authority to rule on the motion to correct error that was filed after the expiration of the original judge’s term. See Ind. Trial Rule 63(A); Oliver v. Morrison, 431 N.E.2d 140, 143 (Ind. Ct. App. 1982) (stating that Trial Rule 63(A) gives a special judge appointed after trial the same authority as the trial judge would have had to rule on a motion to correct error). We also note that a trial court is not prohibited from adopting a party’s proposed order verbatim. Prowell v. State, 741 N.E.2d 704, 708-09 (Ind. 2001); Parks v. Delaware County Dep’t of Child Servs., 862 N.E.2d 1275, 1278 (Ind. Ct. App. 2007). We typically issue the caveat that our confidence that such findings “reflect the considered judgment of the trial court” is eroded, see Prowell, 741 N.E.2d at 709; however, that caveat does not apply with equal force in this case. The trial court issued an order on the Board’s motion to correct error in which it

specifically stated that in issuing its prior order, the trial court had exceeded its limited role in reviewing the Board's findings by reweighing evidence and acknowledging but not giving deference to the substantial evidence supporting at least one of the Board's findings of misconduct. The trial court thus granted the motion to correct error, concluding that the findings of the Board were supported by substantial evidence and were not arbitrary or capricious. Concerned that the trial court's order did not contain findings sufficient to satisfy the requirements of Indiana Code section 36-8-3-4(i),² counsel for the Board informed the trial court of the need for specific findings and offered to draft proposed findings and conclusions. Thus, the Board was not merely submitting a proposed order skewed to its view of the case, but was actually submitting a proposed order based upon the ruling the trial court had already made. We find no error in the trial court's adoption of the proposed findings and conclusions under these circumstances.

Although Humphrey does not specifically argue that the trial court's original decision was correct and thus, granting the motion to correct error was an abuse of discretion, we will briefly address the substantive merits of this case. Following a public hearing, the Board found that Humphrey had committed several instances of misconduct, including leaving his taser gun and confidential documents in his police vehicle when he knew it would be accessible by members of the public, not maintaining his police vehicle in a clean condition, disobeying orders by his superior, and neglecting to make the chief of police aware of a

² Although the trial court's findings in its initial order on the motion to correct error were not lengthy, they did address the relevant aspects of the Board's decision and concluded that the Board's findings were supported by substantial evidence and were not arbitrary or capricious. These findings may have been sufficient to satisfy the statute, but because we conclude below the trial court did not err in adopting the more extensive proposed findings, we express no opinion whether the trial court's original findings satisfied the

conflict between his work schedule and a standing order regarding hours to be worked each week. Humphrey concedes the Board followed the proper procedures. See Brief of Appellant at 5. Having reviewed the transcript of the hearing, we hold that there was substantial evidence supporting the Board's findings and the findings are neither arbitrary nor capricious. Any conflicts in the evidence are not to be reweighed on judicial review. See Chesser, 725 N.E.2d at 930. The trial court did not abuse its discretion in granting the Board's motion to correct error and upholding the Board's disciplinary action against Humphrey.

Conclusion

The trial court did not abuse its discretion in adopting the Board's proposed findings and conclusions granting the Board's motion to correct error. The judgment of the trial court reinstating the Board's disciplinary action against Humphrey is affirmed.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.